

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ECKO COMPLEX, LLC d/b/a ECKO
UNLIMITED,

Plaintiff,

V.

MIRACLE LOGISTICS, INC.,

Defendant.

Honorable Madeline Cox Arleo
Civil Action No. 09-6472 (SDW)

REPORT AND RECOMMENDATION

THIS MATTER having come before the Court upon the motion of defendant Miracle Logistics, Inc. (Defendant”) to dismiss the amended complaint because it is a “shotgun pleading;” or, in the alternative, to dismiss based on improper venue, pursuant to FED. R. CIV. P. 12(b)(3), or alternatively, to transfer venue to the United States District Court for the Southern District of Florida; or in the alternative, to dismiss the negligence count of the amended complaint based on preemption (Dkt. Entry 14); and the Court having considered the papers submitted in support of and in opposition to the motion to dismiss and having heard the argument of the parties, and for the reasons set forth on the record on January 18, 2011, and for good cause shown;

IT IS on this 18th day of January 2011,

RECOMMENDED THAT defendant's motion to dismiss based on improper venue (Dkt. Entry 14) be **DENIED**; and it is further

RECOMMENDED THAT this action be transferred in the interest of justice, pursuant to 28 U.S.C. § 1406(a), to the United States District Court for the Southern District of Florida;

and it is further

RECOMMENDED THAT defendant's motion to dismiss based on a "shotgun" pleading and motion to dismiss the negligence claim (count II) of the amended complaint, (Dkt. Entry 14), be **DISMISSED WITHOUT PREJUDICE** and that defendant be allowed to re-file these two motions with the transferee court in the Southern District of Florida.

The parties have fourteen (14) days from the date hereof to file objections.

s/Madeline Cox Arleo

MADELINE COX ARLEO

United States Magistrate Judge

cc: Hon. Susan D. Wigenton, U.S.D.J.
Clerk of the Court
All Parties
File